HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL NOs.143 & 144 OF 2006

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W.A.NO.143 OF 2006

Between:

Kolliparti Subba Rao

....Appellant/Petitioner

AND

The Ponnuru Municipality rep. by its Commissioner,

Ponnuru, Guntur District and another.

.....Respondents

::JUDGMENT::

Counsel for the Petitioner/appellant : Sri Yallabandi Ramatirtha

Counsel for Respondents : Sri S.Nageswar Reddy

Dated 13..2..2006

Per Shri G.S.Singhvi, CJ

There are two well recognized modes of disposal of the public property by the State and its instrumentalities/agencies. The competent authority can dispose of the public property by way of auction or by draw of lots from among the eligible applicants. Rule 12 of the Andhra Pradesh Municipalities (Regulation of Receipts and Expenditure) Rules, 1968 (for short 'the Rules') also contemplate disposal of the public properties including buildings, shops, godowns etc., by way of lease or by public auction. Clause (e) of Rule 12(1) lays down that all buildings or the terraces of the buildings, shops or godowns and land belonging to the Municipal Council shall be leased out on rent. Second proviso to Rule 12(1) empowers the Municipal Council to grant lease for a period of 3 years. It also provides for renewal of the lease for a period of three years at a time and for a period exceeding three years with the prior sanction of the Government, but not exceeding twenty five years

without conducting public auction. All this is subject to the condition that the existing lessee agrees to the renewal of lease in his favour at a rent which is 33.33% higher than the earlier rent or the prevailing market value of such shops situated in the vicinity, whichever is higher.

We have prefaced the disposal of the above noted appeals by making general observations regarding the mode of disposal of public properties by the State and also by making reference to Rule 12 of the Rules because the only question which arises for determination by the Court is whether the learned Single Judge committed an error by refusing to entertain the appellants' prayer for issuance of a mandamus to Ponnur Municipality (hereinafter referred as 'the respondent municipality') to renew the lease of their shops.

A perusal of the records of the appeals shows that the respondent municipality had leased out shops to the appellants
sometime in 1994 at a monthly rent of Rs.980/- for a period of 3 years. The least granted to each of the appellants was renewed from time to time. The term of the last renewal came to an end on
31-1-2006. In the meanwhile, the appellants represented to the respondent municipality for further renewal of their lease by stating that they are prepared to pay enhanced rent at the rate of 33.33%, but the municipal authorities did not agree to their request in the backdrop of resolution dated 31-10-2005 whereby it was decided to put the shops to auction.

The appellants challenged resolution dated 31.10.2005 by filing Writ Petition Nos.1419 and 1400 of 2006. They pleaded that in terms of second proviso to Rule 12(1) of the Rules, they are entitled to renewal of lease of the shops as of right. The learned Single Judge dismissed the writ petitions by making the following observations.

> "A plain reading of the above proviso would show that the Municipal Council is given discretion to renew the lease for a period of three years at a time and with the prior sanction of the Government for a period exceeding three years and not exceeding twenty-five years. The said Rule confers the discretion on the Municipal Council and does not confer any right on a lessee to continue lease for a period of twenty years. Further, the Municipal Council unanimously resolved not to renew the lease in favour of the petitioners, but decided to

> conduct auction, which is certainly in public interest. The petitioners have not placed any document to show that the Government has sanctioned the renewal of lease in favour of the petitioners. Even according to the petitioners from 1994 onwards, they are continuing as lessees without there being any auction and they cannot now compel the respondent Municipality to lease out the shops to them. The petitioners have failed to prove any right that vests in them for seeking the relief as prayed for."

Learned counsel for the appellants reiterated the argument that in terms of second proviso to Rule 12(1) of the Rules, his clients are entitled to renewal of lease as of right and the resolution passed by the municipality to auction the shops is liable to be quashed on the ground of violation of Article 14 of the Constitution. Learned counsel submitted that even though second proviso to Rule 12(1) uses the word 'may', the same should be read as 'shall' and obligation of the municipality to renew the lease should be read as implicit in the scheme of the Rules.

We have considered the submissions of the learned counsel, but have not felt impressed. In our opinion, the rule making authority has designedly used the word 'may' in second proviso to Rule 12(1) so as to enable the municipalities to take a decision in the matter of extension of lease in favour of the tenants who may be prepared to pay 33.33.% increased rent. The idea behind conferring discretion upon the municipalities to renew the lease is to enable them to make assessment of the market rents and then take appropriate decision keeping in view the interest of their revenue. If the particular municipality comes to the conclusion that more revenue can be garnered by auctioning the shops etc., then it can refuse to renew the lease and resort to the methodology of auction.

In the present case, the respondent municipality did renew the lease granted to the appellants, but that does not mean that it is bound to renew the lease up to a maximum period of 25 years. There is nothing in the plain language of Rule 12 (1) from which it can be inferred that the municipality is obliged to renew the lease of the existing lessee and cannot resort to public auction, which may bring more revenue.

In view of the above, we hold that the learned Single Judge did not commit any error in refusing to entertain the appellants' prayer for issuance of a mandamus to the respondent municipality to renew their lease.

No other point has been argued.

For the reasons stated above, the appeals are dismissed. As a sequel to the dismissal of the appeals, the miscellaneous petitions filed by the appellants for grant of interim relief are also dismissed.

G.S.SINGHVI, CJ

Dt.13.2.2006

G.BHAVANI PRASAD, J

Msv / svs